



BULLETIN

Official Publication of the State Bar of New Mexico

What's Inside

• Advance Opinions

Candace Leyba, conservator of the Estate of Phillip Leroy Urioste, a minor v. Joseph E. Whitley and Daniel W. Shapiro

State v. James T. Meadors

NOTICES

Supreme Court Rules and Forms

All Execution and Garnishment Rules and Forms take effect January 1, 1996.

Disciplinary Board

In the Matter of JOANNE M. CARVER, ESQ, an attorney licensed to practice before the courts of the State of New Mexico.

FORMAL REPRIMAND

The charges filed against you in this proceeding arose from three very similar complaints. All three complainants alleged that you undertook to represent them in domestic relations cases and that you failed to provide timely notice to them of hearings in their cases. Two of the complainants also alleged that you failed to respond promptly to their efforts to requests for information. The third complaint included allegations that you had attempted to charge approximately \$1,000 in interest on the complainant's unpaid fee balance, despite the fact that you had not sent bills to her during the time the interest charges were accruing.

This is not the first time disciplinary charges have been filed against you for lack of diligence and failure to communicate. In 1991, you were the subject of multiple complaints alleging lack of diligence and failure to communicate, which resulted in formal disciplinary

charges being filed. In that proceeding, you entered into a Conditional Agreement Not to Contest and Consent to Discipline ("First Consent Agreement"). Under the terms of the First Consent Agreement, approved by the Hearing Committee and the Disciplinary Board, you received a formal reprimand, the imposition of which was deferred for one year. You were placed on probation under the supervision of a licensed New Mexico attorney for the one-year deferral period.

During your probation, you were required to receive instruction from your supervisor in the areas of law office management, caseload management and the development of a system for prompt communication with clients and opposing counsel. In addition, you were required to follow the instructions of the supervising attorney concerning the acceptance of new cases and make restitution to one of your clients for attorney's fees he was ordered to pay to his ex-wife due to your failure to act diligently on his behalf. Ultimately, after several extensions of your probation, you were found to have successfully completed your probation. As a result, you received an informal admonition,¹ instead of a formal reprimand, for having violated your duties of diligence and communication.

Notwithstanding the extensive effort made in the prior proceeding to address your pattern of neglect and failure to communicate, more complaints were received alleging these same problems. After the current disciplinary charges were filed, you again entered into a Conditional Agreement Not to

continued on page 3

URGENT NOTICE

**Judicial Nominating
Commission Vacancies**
*See the Interest Sign-up Form
on Page 5.*
Due December 18th

**DUES ARE DUE
BY
FEBRUARY 1**

**A \$100 LATE FEE
WILL BE CHARGED
AFTER FEBRUARY 1**

Contest ("Second Consent Agreement"). The Hearing Committee recommended acceptance of the Second Consent Agreement only after a hearing was held and certain amendments to the agreement were made. The Disciplinary Board panel subsequently approved the agreement.

The discipline imposed pursuant to the terms of the Second Consent Agreement included the issuance of this Formal Reprimand, the obligation for you to obtain personal help with your communication problems, and an indefinite period of supervised probation during which your attorney supervisor will monitor your caseload to assure you are communicating adequately with your clients, including giving adequate notice of all hearings, trials and other deadlines, and that you are acting with reasonable diligence on behalf of your clients. You also agreed to remove the interest charges assessed when bills were not being sent to your client; in return, disciplinary counsel agreed to dismiss the charge that imposing these charges had violated SCRA 1986 16-105. In addition, you are obligated to pay the costs of the disciplinary proceeding.

Although the Second Consent Agreement was ultimately approved, both the Hearing Committee and the Disciplinary Board panel expressed concern over the striking similarity between the violations involved in this proceeding and those which were the subject of the prior proceeding. This should provide fair warning that if a future disciplinary proceeding results in a finding that you have again neglected legal matters entrusted to you and failed to communicate with your clients, you could face more serious disciplinary sanctions. Those possible sanctions would include the suspension or loss of your license to practice law.

The New Mexico Supreme Court has stated that, "Repeated instances of the same conduct for which a lawyer previously has been disciplined generally will result in more severe discipline." *In re Rivera*, 112 N.M. 217, 218, 813 P.2d 1015, 1016 (1991). Given the unfortunate similarity of the multiple

complaints which have been the subject of these two disciplinary proceedings, and given that the purpose of discipline is to protect the public, it is clear that additional instances of neglect and failure to communicate could result in the imposition of extreme sanctions; at that point, even the more serious discipline imposed in this proceeding would have been shown to have been unsuccessful.

An attorney who fails to correct practice problems should not be surprised if additional occurrences of the same misconduct result in the loss of the privilege to practice law. See, SCRA 1986 17-205. The court has stated as follows with regard to this privilege.

It carries with it the responsibility to provide service to one's clients. Failing to act on a client's matter with due diligence violates the trust a lawyer is given when he or she receives a license to practice law. *In re Reid*, 116 N.M. 38, 40, 859 P.2d 1065 (1993).

There is another, more pragmatic, reason why you should not be surprised if additional instances of misconduct were to result in the imposition of severe disciplinary sanctions. That is the simple fact that the vast majority of lawyers are not the subject of repeated complaints of neglect, delay and failure to communicate. This includes lawyers who, like you, practice primarily domestic relations law. If you continue to harbor the belief that your disciplinary woes are caused by clients who are difficult to please, the simple fact that other lawyers do not experience the same complaints should disabuse you of that notion.

The discipline imposed in this proceeding represents what may well be the final attempt to correct your continued difficulties with diligence and communication. You are urged to appreciate the seriousness of your situation and to avail yourself of the opportunity to correct your practice deficiencies while you have the chance.

This formal reprimand will be filed with the Supreme Court in accordance with Rule 17-206 (D) and will remain part of your permanent records with the Disciplinary Board, where it may be revealed upon any inquiry to the board concerning any discipline ever imposed

against you. In addition, in accordance with Rule 17-206(D), the entire text of this reprimand will be published in the State Bar of New Mexico *Bar Bulletin*.

The costs of this action in the amount of \$291.02 are assessed against you and were to be paid to the Disciplinary Board office on or before November 9, 1995.

¹ Although an informal admonition is private discipline, it can be revealed and considered in a subsequent disciplinary proceeding, if, as here, the subsequent charges are filed within ten years after the admonition was issued and concern the similar allegations of misconduct. See, SCRA 1986 17-308 (A).

Supreme Court *Law Library Holiday Hours*

Open: December 22, 8 a.m.-5 p.m.
Closed: December 23-25
Open: December 26-29, 8 a.m.-5 p.m.
Closed: December 30 - January 1.

Court of Appeals *Las Cruces Satellite - Moved*

The Court of Appeals satellite office in Las Cruces has moved to a new location. The court has a new mailing address and phone number at the new location.

Effective immediately, the new mailing address and phone number are as follows:

201 West Picacho Ave., Suite C,
Las Cruces, New Mexico 88005; 523-8261; fax 523-8264.

Second Judicial District *Judicial Vacancy*

A vacancy in the Second Judicial District, Division XXI, in Bernalillo County, will exist January 1, 1996, created by the New Mexico Legislature during the last legislative session. The judge filling this position will be assigned to Domestic Violence Court.

continued on next page